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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 MARIA CORRALES,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL
12 SECURITY,

13 Defendant.

NO: 4:16-CV-5081-RMP

ORDER DENYING PLAINTIFF'S
MOTION AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

14 BEFORE THE COURT are cross-motions for summary judgment from
15 Plaintiff Maria Corrales, **ECF No. 15**, and the Commissioner of Social Security
16 (the "Commissioner"), **ECF No. 13**. Ms. Corrales sought judicial review, pursuant
17 to 42 U.S.C. § 405(g), of the Commissioner's denial of her claims for disability
18 insurance benefits under Title II of the Social Security Act (the "Act") and
19 supplemental security income under Title XVI of the Act. The Court has reviewed
20 the motions, Plaintiff's reply memorandum, the administrative record, and is fully
21 informed. The motions were heard without oral argument. For the reasons stated

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1 below, the Commissioner's motion is granted, and Ms. Corrales's motion is
2 denied.

3 **BACKGROUND**

4 **A. Ms. Corrales's Claim for Benefits and Procedural History**

5 Ms. Corrales applied for disability benefits on August 9, 2012, and for
6 supplemental security income benefits on August 27, 2012, alleging disability due to
7 diabetes, arthritis, high blood pressure, and anxiety. Administrative Record ("AR")
8 173-74, 175-84, 206.¹ At the time, she was 40 years old. AR 22, 173. It is
9 undisputed in the record that Ms. Corrales had "insured status" until March 31,
10 2016, meaning that her claimed disability must have begun before that date for her
11 to receive the Social Security benefits she seeks.

12 The Commissioner denied Ms. Corrales's claims initially and on
13 reconsideration, and Ms. Corrales consequently requested a hearing. AR 133-34.

14 **B. October 2, 2014 Hearing**

15 Ms. Corrales was represented by attorney Randy Fair at her hearing before the
16 administrative law judge ("ALJ") on October 2, 2014.² AR 29, Tr. at 34. Ms.
17 Corrales testified that she was 42 years old at the time of the hearing. AR 35. She
18 came to the United States when she was in approximately the third grade and left
19

20 ¹ The AR is filed at ECF No. 10.

21 ² Ms. Corrales is represented by different counsel, D. James Tree, on appeal.

1 school after fifth grade. AR 33. She lives with her minor son, her daughter, and her
2 grandson. She testified to the variety of daily activities and household chores she is
3 able to perform, some with the assistance of her daughter or parents, who live
4 nearby. She also testified regarding her issues with controlling her weight and,
5 relatedly, her diabetes. Ms. Corrales detailed her limited work history in response to
6 questions from the ALJ. A vocational expert also was examined by the ALJ and Ms.
7 Corrales's attorney.

8 **C. ALJ's Decision**

9 The ALJ issued her decision finding Ms. Corrales not disabled on December
10 23, 2014. The ALJ undertook the five-step disability evaluation process, outlined
11 below, and the Court summarizes the ALJ's findings as follows:

12 **Step one:** Ms. Corrales has not engaged in substantial gainful activity since
13 her alleged onset date of December 31, 2011.

14 **Step two:** Ms. Corrales has the following severe impairments: diabetes
15 mellitus, peripheral neuropathy, arthritis, bilateral carpal tunnel syndrome,
16 ulnar neuropathy left elbow, obesity and high blood pressure. Ms. Corrales's
17 anxiety symptoms do not qualify as a severe impairment because there is no
18 diagnosis of anxiety from an acceptable medical source.

19 **Step three:** Ms. Corrales does not have an impairment or combination of
20 impairments that meets or medically equals one of the listed impairments in
21 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 **Residual Functional Capacity (“RFC”):** During the relevant period, Ms.
2 Corrales has retained the ability to perform “less than the full range of light
3 work as defined in 20 C.F.R. 404.1567(b) and 416.967(b).” AR 19. She
4 needs a sit/stand option at every hour for five minutes. She occasionally can
5 climb ramps, stairs, balance, stoop, kneel, crouch and crawl, but cannot climb
6 ladders, ropes or scaffolds. She frequently can handle and finger, bilaterally,
7 and feel, bilaterally. She must avoid concentrated exposure to extreme cold
8 and excessive vibration, but can work in an environment with “moderate
9 exposure to operational control of moving machinery, unprotected heights and
10 hazardous machinery.” *Id.*

11 **Step four:** Ms. Corrales has no past relevant work to evaluate. Ms. Corrales
12 testified that information in the agency’s records that she worked at “Inspire
13 Development Center” in 2002 and “Dutch Fashion” in 2003 was inaccurate,
14 and these were the only periods during which the record indicated that she
15 worked at a substantial gainful activity level.

16 **Step five:** However, jobs exist in significant numbers in the national economy
17 that Ms. Corrales could perform given her age, education, work experience
18 and RFC. Representative occupations that the vocational expert opined that
19 Ms. Corrales would be able to perform include bench assembler and basket
20 filler. Therefore, she is not disabled.

21 *See* AR 17-24.

1 Ms. Corrales requested review of the ALJ's decision by the Appeals Council.
2 When the Appeals Council denied review, the ALJ's ruling became the final
3 decision of the Commissioner and appealable to this Court under 42 U.S.C. §
4 405(g).

5 **APPLICABLE LEGAL STANDARDS**

6 **A. Standard of Review**

7 Congress has provided a limited scope of judicial review of a Commissioner's
8 decision. 42 U.S.C. § 405(g). A court may set aside the Commissioner's denial of
9 benefits only if the ALJ's determination was based on legal error or not supported by
10 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985) (citing
11 42 U.S.C. § 405(g)). "The [Commissioner's] determination that a claimant is not
12 disabled will be upheld if the findings of fact are supported by substantial evidence."
13 *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)).
14 Substantial evidence is more than a mere scintilla, but less than a preponderance.
15 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); *McCallister v.*
16 *Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989). Substantial evidence "means such
17 evidence as a reasonable mind might accept as adequate to support a conclusion."
18 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch
19 inferences and conclusions as the [Commissioner] may reasonably draw from the
20 evidence" will also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir.
21 1965). On review, the court considers the record as a whole, not just the evidence

1 supporting the decisions of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20,
2 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

3 It is the role of the trier of fact, not the reviewing court, to resolve conflicts in
4 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
5 interpretation, the court may not substitute its judgment for that of the
6 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
7 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
8 set aside if the proper legal standards were not applied in weighing the evidence and
9 making a decision. *Browner v. Sec’y of Health and Human Services*, 839 F.2d 432,
10 433 (9th Cir. 1988). Thus, if there is substantial evidence to support the
11 administrative findings, or if there is conflicting evidence that will support a finding
12 of either disability or nondisability, the finding of the Commissioner is conclusive.
13 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

14 **B. Definition of Disability**

15 The Social Security Act defines “disability” as the “inability to engage in any
16 substantial gainful activity by reason of any medically determinable physical or
17 mental impairment which can be expected to result in death or which has lasted or
18 can be expected to last for a continuous period of not less than 12 months.” 42
19 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a Plaintiff shall
20 be determined to be under a disability only if his or her impairments are of such
21 severity that Plaintiff is not only unable to do his or her previous work but cannot,

1 considering Plaintiff's age, education and work experiences, engage in any other
2 substantial gainful work which exists in the national economy. 42 U.S.C.
3 §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both
4 medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
5 (9th Cir. 2001).

6 **C. Sequential Process**

7 The Commissioner has established a five-step sequential evaluation process
8 for determining whether a claimant is disabled. 20 C.F.R. § 416.920. Step one
9 determines if he or she is engaged in substantial gainful activities. If the claimant is
10 engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §§
11 404.1520(a)(4)(i), 416.920(a)(4)(i).

12 If the claimant is not engaged in substantial gainful activities, the decision
13 maker proceeds to step two and determines whether the claimant has a medically
14 severe impairment or combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
15 416.920(a)(4)(ii). If the claimant does not have a severe impairment or combination
16 of impairments, the disability claim is denied.

17 If the impairment is severe, the evaluation proceeds to the third step, which
18 compares the claimant's impairment with a number of listed impairments
19 acknowledged by the Commissioner to be so severe as to preclude substantial
20 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); *see also* 20
21

1 C.F.R. § 404, Subpt. P, App. 1. If the impairment meets or equals one of the listed
2 impairments, the claimant is conclusively presumed to be disabled.

3 If the impairment is not one conclusively presumed to be disabling, the
4 evaluation proceeds to the fourth step, which determines whether the impairment
5 prevents the claimant from performing work he or she has performed in the past. If
6 the plaintiff is able to perform his or her previous work, the claimant is not disabled.
7 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's RFC
8 assessment is considered.

9 If the claimant cannot perform this work, the fifth and final step in the process
10 determines whether the claimant is able to perform other work in the national
11 economy in view of his or her residual functional capacity and age, education and
12 past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v.*
13 *Yuckert*, 482 U.S. 137 (1987).

14 The initial burden of proof rests upon the claimant to establish a prima facie
15 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
16 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
17 is met once the claimant establishes that a physical or mental impairment prevents
18 her from engaging in her previous occupation. The burden then shifts, at step five,
19 to the Commissioner to show that (1) the claimant can perform other substantial
20 gainful activity, and (2) a "significant number of jobs exist in the national economy"

1 which the claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir.
2 1984).

3 **D. Treating Physician Rule**

4 The treating physician rule requires that an ALJ give the medical opinion of a
5 claimant's treating physician controlling weight if it is well supported by medical
6 findings and not inconsistent with other substantial record evidence. 20 C.F.R. §
7 404.1527(c)(2). Although the Commissioner has eliminated the treating physician
8 rule for claims filed on or after March 27, 2017, 82 Fed. Reg. 5852-53, the rule
9 applies to Ms. Corrales's claim filed in August 2012, *see* AR 173-84.

10 The Commissioner may decline to give the claimant's treating physician
11 controlling weight, only for "clear and convincing reasons" if the treating
12 physician's opinion is not contradicted by another doctor, or for "specific and
13 legitimate reasons" supported by substantial evidence in the record, where the
14 treating physician's opinion is contradicted by another doctor. *Lester v. Chater*, 81
15 F.3d 821 821, 831 (9th Cir. 1995). In addition, "the ALJ need not accept the opinion
16 of any physician, including a treating physician, if that opinion is brief, conclusory,
17 and inadequately supported by clinical findings." *Bray v. Comm'r of Soc. Sec.*
18 *Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (citation and alteration omitted).

19 **ISSUES ON APPEAL**

20 **A. Whether the ALJ erroneously omitted one or more severe** 21 **impairments at step two**

1 she catalogs Ms. Corrales's conditions and symptoms: "diabetes, swollen feet,
2 difficulties with her upper extremities and fingers as well as . . . high cholesterol,
3 morbid obesity, urinary incontinence, plantar fasciitis, lumbago, neuropathy, carpal
4 tunnel[.]" AR 549. Dr. Gavino then opines that Ms. Corrales would only be able to
5 use her hands for fingering and grasping 2-4 hours of an 8-hour day, would only be
6 able to stand and walk for 1-2 hours of an 8-hour workday and would not be able to
7 work 40 hours per week consistently due to "her symptoms such as unable to
8 sit/stand prolonged, keep/make appointments, heavy lifting." AR 549.

9 An ALJ's error is harmless, even where an omitted impairment is supported
10 by substantial evidence, if she goes on to analyze how limitations that may arise
11 from that impairment affect the claimant's RFC. *See Lewis v. Astrue*, 498 F.3d 909,
12 911 (9th Cir. 2007) (ALJ committed harmless error in failing to include a severe
13 impairment at step two where that impairment's limitations were factored into the
14 RFC); *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005) (Harmless error where
15 the ALJ omitted obesity as a severe impairment but nonetheless factored resulting
16 limitations into the RFC determination). Ms. Corrales herself groups the functional
17 limitations resulting from her heel pain and plantar fasciitis with the severe
18 impairments identified by the ALJ, indicating that the pain in her back, obesity, and
19 diabetes were the issues that prevented her from standing for too long. AR 39-40,
20 42. Moreover, the ALJ considered the limiting effects of the foot issues described
21 by Plaintiff during the hearing in her determination of Plaintiff's RFC:

1 The claimant alleges that her hands and fingers were constantly numb.
2 Her neuropathy symptoms limited her ability to stand and walk. She
3 was restricted with lifting, stair climbing and using her hands. Exhibit
4 6E. According to the claimant's testimony, she could walk about ten
5 minutes and stand for twenty-five minutes to an hour. If she walked
and rested during the day, she could stand or walk about an hour and a
half. These impairments, in combination, are significant enough to
prevent her from working an eight-hour workday, forty-hour
workweek.

6 AR 20.

7 The ALJ found that Ms. Corrales exhibited several severe impairments at the
8 second step of the disability analysis. As a result, the ALJ proceeded through the
9 remainder of the sequential process. In so doing, the ALJ considered the symptoms
10 related to the omitted impairments. Therefore, the Court finds no error on this
11 ground.

12 **Evaluation of Plaintiff's credibility**

13 Plaintiff argues that the ALJ did not rely on substantial evidence when she
14 determined that Ms. Corrales's testimony regarding the severity of her symptoms
15 and limitations was not fully credible. Ms. Corrales maintains that it is inappropriate
16 to discount her subjective reports of her symptoms and abilities on the basis of her
17 activities of daily living without finding that those activities are transferable to a
18 work setting.

19 The Commissioner argues that the ALJ found Plaintiff's subjective complaints
20 to be not entirely credible, in part, because Plaintiff's testimony demonstrated that
21 she was not compliant with her care providers' recommendations for treatment.

1 The Commissioner emphasizes that the ALJ also discounted Plaintiff's subjective
2 complaints because they were at odds with the medical evidence and were related to
3 conditions, such as her obesity, which had been treated more conservatively than
4 was possible.

5 When the ALJ finds that a claimant's statements as to the severity of
6 impairments, pain, and functional limitations are not credible, the ALJ must make a
7 credibility determination with findings sufficiently specific to permit the court to
8 conclude that the ALJ did not arbitrarily discredit claimant's allegations. *Thomas v.*
9 *Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002); *Bunnell v. Sullivan*, 947 F.2d 341,
10 345-46 (9th Cir. 1991) (en banc).

11 If there is no affirmative evidence that the claimant is malingering, the ALJ
12 must provide "clear and convincing" reasons for rejecting the claimant's symptom
13 testimony. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). The ALJ engages
14 in a two-step analysis in deciding whether to admit a claimant's subjective symptom
15 testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007); *Smolen v.*
16 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). Under the first step, the ALJ must find
17 the claimant has produced objective medical evidence of an underlying
18 "impairment," and that the impairment, or combination of impairments, could
19 reasonably be expected to cause "some degree of the symptom." *Lingenfelter*, 504
20 F.3d at 1036. If the ALJ determines that the objective medical evidence alone does
21 not substantiate the claimant's statements about the intensity, persistence, or

1 functionally limiting effects of her symptoms, the ALJ must assess the credibility of
2 the claimant's statements based upon consideration of the entire record. 20 C.F.R.
3 §§ 404.1527, 416.927; *see also* SSR 96-2p, 1996 SSR LEXIS 9, 61 Fed. Reg. 34489
4 (July 2, 1996); SSR 96-5p, 1996 SSR LEXIS 2, 61 Fed. Reg. 34471 (July 2, 1996);
5 and SSR 06-3p, 2006 SSR LEXIS 5, 71 Fed. Reg. 45593 (Aug. 9, 2006).

6 The Court agrees with the Commissioner that substantial evidence in the
7 record supports the ALJ's decision to discount aspects of Plaintiff's testimony
8 regarding her level of pain and incapacitation for lack of credibility. A credibility
9 determination is appropriately in the province of the ALJ, and it is not the reviewing
10 court's role to disturb that determination unless it appears that the ALJ arbitrarily
11 discredited the claimant's testimony. *Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir.
12 1995). Among the factors that an ALJ may consider when determining credibility
13 are the claimant's daily activities, inadequately explained failure to follow a
14 prescribed course of treatment, and testimony from the claimant that appears less
15 than candid. *See id.*

16 Ms. Corrales inadequately explained her failure to arrange for the counseling
17 that was offered regarding better management of her weight and diabetes, and notes
18 from visits to her treating physician evidence inconsistent insulin use. AR 50-51,
19 463, 491. Moreover, it is reasonable for the ALJ to scrutinize the potential
20 disconnect between Ms. Corrales's testimony regarding her level of pain and
21 incapacitation and her reports of her daily activities, including driving herself to do

1 shopping and visit family members, completing two to three loads of laundry each
2 week, watching her 5-year-old grandson and caring for her 9-year-old son, washing
3 some of the household dishes, and being able to walk for approximately an hour and
4 a half over the course of a day. *See* AR 21, 37, and 41-48. The ALJ, therefore,
5 discounted Ms. Corrales’s testimony for germane reasons and based on substantial
6 evidence in the record.

7 **B. Evaluation of medical opinion evidence**

8 Ms. Corrales argues that the ALJ erred in determining that her treating
9 physician Dr. Gavino’s opinion was based on a “relatively short” treating
10 relationship and a lack of objective medical evidence. The Commissioner responds
11 that an ALJ appropriately may discount a doctor’s opinion that is based to a large
12 extent on a claimant’s own accounts of symptoms and is in conflict with other
13 evidence in the record.

14 The opinions that Dr. Gavino expressed in her physician’s statement, based on
15 a one-year treatment relationship with Ms. Corrales, are recited above. *See also* AR
16 549. The ALJ discounted Dr. Gavino’s opinion because the physician “did not
17 provide any explicit objective information to substantiate her assessment.” AR 21.
18 Likewise, the Court cannot identify from Dr. Gavino’s statement or the surrounding
19 record what, if any, objective medical evidence supports her conclusions. The ALJ
20 was justified in not giving controlling weight to the opinions.

1 **CONCLUSION**

2 There is substantial evidence in the administrative record supporting the
3 ALJ's determination that Plaintiff was not disabled during the relevant period and is
4 able to perform "less than the full range of light work as defined in 20 C.F.R.
5 404.1567(b) and 416.967(b)." AR 19.

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.

8 2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is

9 **GRANTED.**

10 3. Judgment shall be entered for Defendant.

11 The District Court Clerk is directed to enter this Order, enter Judgment as
12 outlined above, provide copies to counsel, and **close this case**.

13 **DATED** August 30, 2017.

14 s/ Rosanna Malouf Peterson
15 ROSANNA MALOUF PETERSON
16 United States District Judge
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